ficial hearer supposes that there is an *express guarantee* in the Federal Constitution in regard to slavery. Now, sir, I am ready to maintain that the Constitution of the United States does not recognize slavery, or guaranty slavery, any more than it recognizes or guaranties the relation of husband and wife, or parent and child. By the same law under which you recapture your fugitive slave, you can recapture your son or your indentured apprentice, if either should escape from the State in which you live and he found in another State.

Now, sir, the *recognition* of a thing, and the establishment or creation of it, are very different things.

Mr. LAMAR. That is just the point at which I would like to put my question.

Mr. ETHERIDGE. Very well. I will hear you.

Mr. LAMAR. I wish to know whether the gentleman maintains and asserts the power of Congress to punish slavery as a crime in the Territories of the United States?

Mr. ETHERIDGE. I will answer the question fully before I close—if not sooner, when I come to state my reasons for consenting to vote for the bill. I am now, however, endeavoring to point out the difficulties some of my friends upon the other side of the House may have in arriving at a similar conclusion, for they may not he able to discern them readily. (Laughter.) I desire this great reform in Utah should be effected, and I shall go very far to accomplish it, hut I will not permit my friends on the other side "to go it hlindly." (Renewed laughter.)

But to return to this constitutional recognition or guarantee of slavery. I say if this be true, and you have, therefore, a *constitutional* right to your negro; you have the same right to your wife, to your children, and to your apprentice. I repeat, there is a great difference hetween the *recognition* of a right or a thing, and the *creation* or *establishment* of that thing or that right. Sir, the old thirteen States are recognized by the Constitution; hut did the Constitution create them? The Constitution recognizes certain rivers, hays and mountains; but did the Constitution create, or make, or establish them? The Constitution recognizes foreign Powers—Powers which have existed for centuries; hut, I ask, did the Constitution create or establish any one of these Powers, which it recognizes in terms? It recognizes slavery hy implication, in the same article in which it also recognizes husband and wife, parent and child. Any man who lives in a State where the common law of England prevails, may invoke the aid of the Constitution or the law of Congress for the reclamation of his fugitive wife, child, or apprentice. I repeat, that any man living in a State in which the common law of England has not been abolished, may claim the provisions of the fugitive slave law for the surrender of his fugitive wife, his minor child, or his indentured apprentice, to the same extent as the master who seeks to recapture his slave. By the common law the relation hetween parent and child, master and apprentice, and master and slave, is in kind almost identical, or the same. The only difference that exists is in the degree of power and authority, and the duration of the reciprocal relations or duties they owe each other.

Why, sir, your son owes you his service and labor until he is twen-

ty-one years of age. You owe him, in return, your protection and moral training; and that is precisely the relation which exists between you and your slave. The slave owes you his service and labor. There is this difference, however; that the property in your child, or your right to his service or labor, ceases when he becomes twenty-one years of age; while your property in your slave and your right to his service and labor extend to the day of his death, if he should be a slave for life. With this exception, your power in both cases is, in kind, about the same. Your power over your child includes the right to chastise him; and you may hire him to another, if you please; but, as I have already said, your right to his labor and your power of control ceases when his minority ceases; while, in the case of the slave, your control continues during his life.

Now, sir, if your slave, your son, or your apprentice, escapes from a *State* in which the common law prevails, into another *State*, you have the same right, founded upon the same authority, to pursue and recapture the one as the other. The proceeding is a simple one. In the case of the child or apprentice, you would have to prove, before the commissioner who heard the case, that, by the law of the State whence they fled, you were entitled to their labor or service, and that they were fugitives; in which event, the father or the master, as the case might be, would be entitled to a surrender of the fugitive, precisely as in the case of a slave. And so, no doubt, in regard to the fugitive escaping from a State in which the common law of England prevails.

Until within the last few years, the right of the husband to chastise the wife for good cause was recognized in many of the States, as a common law right; and now, wherever the common law prevails, his right to her labor and to all her earnings is still recognized as unqualifiedly as the right of the master to the earnings of the slave; and it must not be forgotten, that the common law was in force in all the States when the Federal Constitution was adopted. I say, therefore, that the right recognized by the Constitution of property in slaves is almost identical with the right recognized by the same instrument of the father or master to the apprentice or the child, or of the husband to the custody, the labor, and the earnings of the wife.

Now, sir, the relation between master and slave, it should be remembered, is older than the Constitution, and exists to-day in the southern States of this Union upon a basis tenfold stronger and more enduring than any supposed guarantees found in the Constitution. If you place it upon the rickety platform of the Constitution alone, I warn you you are thereby throwing away your strongest safeguards for its protection. The object of that clause in the Constitution was merely to secure, by compact between sovereign States, the enforcement of a personal remedy for the recovery of fugitives, which, without the guarantee of the Constitution, would have been left alone to the comity of the States. If you hold your slaves by virtue of the Constitution, instead of the laws of the States, which in many cases are older than the Constitution, will you not have to look to the Federal Government for protection to slave property? And will you not thereby do yourselves an ultimate injury, because of the abandonment of the stronger position which I have always assumed—that the Con-

stitution carries slavery nowhere, and nowhere prohibits it. To show that I am right, I put this case: if your slave escapes from you, and does not go out of the State in which you reside, you may invoke the Federal Government—the fugitive slave law—till dooms-day to capture him; but the Federal Government will give you no relief until the slave passes beyond the jurisdiction in which he resides *into another State*, at which time the slave may be arrested by authority of the Federal Government, and not before. But the Federal Government does not go beyond this. To this extent it goes, and no further; because this is the full extent of the recognition of slavery contained in the Constitution. At this point the Constitution has performed its full office, and beyond this you cannot invoke its aid.

Mr. JENKINS. I should like to ask the gentleman from Tennessee a question, for he has been indulging in rather severe strictures upon the doctrines of the Democratic party. I understand the gentleman to hold that my title to a slave which I take into one of the Territories of the United States is not derived from the laws of the State from whence I come. What I ask the gentleman is, from whence I derive the title to my slave, then, if not by those laws?

Mr. ETHERIDGE. So far as regards any strictures I may have indulged in upon the doctrines of the Democratic party, I say to the gentleman that I have learned these doctrines from the teachings of that party, for I have been for years hunted down in my own State by the members of that party for not acceding to their great discovery of the right of the people of the Territories "to form and regulate their domestic institutions in their own way." I learned them some years ago in this House, when they began their denunciations against me for protesting against the repeal of the Missouri compromise at the time of the passage of the Kansas-Nebraska bill.

I denounced it in this House and elsewhere as containing these odious features of which I now speak—"squatter sovereignty;" and for that I was assailed in a spirit of bitterness by the Democratic party. And, sir, my opposition to that Kansas-Nebraska bill was not based altogether upon unselfish motives. I felt satisfied if that compromise was broken down it could do the South no good; it might produce much mischief. How was it possible for the South, with its feeble numbers, feeble in comparison with the North, to emigrate to these Territories and compete successfully with the millions of the North in a struggle for political supremacy? I was in favor of retaining that compromise, which gave protection to the South in all the Territories south of it. I saw then, as clearly as I see now, that we could have no hope in this sort of a contest—a contest in which soil, climate, and a preponderance of population in the free States, to say nothing of the foreign population, of which there were then arriving about a half a million a year, were to be encountered. I was unwilling to provoke such a contest.

It cannot be forgotten that every acquisition of territory by this country since the formation of the Government, with but one exception, (Florida,) has sooner or later provoked an angry agitation of the slavery question. The first grew out of the acquisition of the Territory of Louisiana. It was renewed at the time of the annexation of Texas; and again when we conquered from Mexico, California, Utah,

and New Mexico. The first settlement of this slavery question was made for the country known as the Louisiana Territory — it was the Missouri compomise. On the application for the admission of Missouri an angry controversy arose, which I will refer to only to say that it was settled by the compromise of 1820.

The annexation of Texas produced other dangers, and provoked additional agitation, which was, however, happily adjusted by extending the Missouri compromise through that State at the time of admitting it into the Union. Subsequent to this, we acquired Utah, New Mexico, and California, as I have stated, when this disturbing element again provoked angry wrangling and debate. The struggle ended, however, as we all know, in the compromise measures of 1850, which were regarded as a finality; which we were assured were to be a final settlement of the whole subject. Thus we see that whenever the Union of the States has been endangered, as it was at each of these periods, the dangers which were then impending were in each instance arrested by a *compromise*, regarded as honorable by all parties at the time. It is historically true that each of these compromises was sanctioned and approved by the most distinguished men of all parties; that they restored and maintained peace between the North and the South, and that peace was never so seriously endangered as when the Democratic party, in 1854, repealed the oldest and most venerated of all these compromises, and inaugurated their new dogma of popular sovereignty in the Territories. Out of it has grown the present unhappy condition of public affairs. To it alone do I trace the great political evils of the day. We all feel and know that these things are so. I have never regarded the mode of settling the slavery question so important as letting it alone after it *is* settled. You settled it in 1840.

Mr. SINGLETON. I want to know exactly what is the gentleman's position, and I hope he will let me propound an interrogatory to him.

Mr. ETHERIDGE. Certainly, sir.

Mr. SINGLETON. I understand the gentleman to say, that every man who votes for this bill admits the power of Congress to regulate slavery in the Territories, to abolish it, to drive it out of the Territories if it should be deemed proper to do so. Do I understand the gentleman correctly? I hope the gentleman will give me a straightforward answer. I am a frank man. I have put a plain question, and I hope the gentleman will answer it in the same spirit.

Mr. ETHERIDGE. I will give the gentleman an answer, and I may mix up the answer with a little Democracy. (Laughter.) In my judgment, the power to regulate this question of adultery or polygamy in the Territories, and which this bill applies to white people, may with equal propriety be applied to the negro, if Congress should think proper to do so. This bill involves a concession of the power.

Mr. SINGLETON. That is not an answer.

Mr. ETHERIDGE. If Congress can, by a system of "unfriendly legislation," disturb or interfere with the domestic relations of the white race, it can, in my judgment, interfere with the domestic relation of the negro race. I say, if Congress can, by imposing a fine of $500 and imprisonment for two years, punish white men for the of-

fence of polygamy, as provided by the bill, it may certainly extend the provisions of the bill and embrace adultery as an offence, and punish all persons who may perpetrate the offence. If we may do the one, certainly we have power to do the other. Whoever votes for this bill must, therefore, do so with the express or implied admission that Congress has power to punish all offences of this kind in the Territories, without reference to the persons who may be found guilty of the offence.

If Congress should hereafter become perverse enough to attempt such "unfriendly legislation," and make the application to slaves in the organized Territories, I apprehend this bill will be cited as a precedent for such "unfriendly legislation" against slavery. Should the attempt ever be made, I have too much respect for the fairness and liberality of the great body of the American people, of my countrymen, to believe that a controlling majority can ever be found in Congress who will seize this as a pretext to adopt any such annoying legislation in regard to slaves in the Territories — the common property of all the people. I shall not, however, withhold my approval of this bill because of any fears I have of any such result.

Mr. SINGLETON. There is a good deal of circumlocution about the gentleman's answer. I have made the sincerest efforts to understand the gentleman, and I do not understand him yet. I put it to him in all candor whether, by voting for this bill, as he says he intends to do, he thereby publishes to the world that he recognizes the power of Congress to abolish slavery in the Territories whenever it may think proper.

Mr. ETHERIDGE. I have repeatedly stated that I was in favor of driving this nauseating and disgusting crime of polygamy from the face of the earth. I desire to see it accomplished speedily. I am not only in favor of doing it; I will claim, sir, the power to do so. I have already admitted that in doing so, in legal effect, we are making a concession of the power of Congress over the Territories; which, by an extension of the principle, can be made to embrace and effect negroes as well as white people; and that the only guarantee I have against the use of any such power in the future, to the prejudice of the slaveholder in the Territories, is in the good sense and liberality and forbearance of Congress in withholding the "unfriendly legislation" to which I have alluded.

Mr. SINGLETON. You have declared every man upon this side of the House who votes for this bill recognizes the power of Congress to abolish slavery in, or to exclude slavery from, the Territories. Do you publish to the world that that is the position you assume when you vote for the bill?

Mr. ETHERIDGE. If Congress is disposed to pass "unfriendly legislation" in regard to the social intercourse and domestic relations of the white people of Utah, it may, I apprehend, extend its action, and include black people also. (Laughter.)

Mr. MILLSON. I have a single question. The gentleman says if this be extended to white people it may be extended to black people in the Territories. I put it to the gentleman whether there is any sort of objection to applying it to black men and black women in the Territories, who are free, and capable of contracting marriage?

Mr. ETHERIDGE. None in the world. I understand the very basis of this legislation to be that polygamy is offensive to the moral sense and the enlightened spirit of the age. It is offensive to religion.

Mr. PRYOR. As I have already indicated, I propose to vote for this bill. The honorable gentleman from Tennessee declares that he regards the vote of every gentleman who supports this bill as tantamount to an acknowledgment of the right of Congress to abolish slavery in the Territories. That may be true of that gentleman, and of course it is true, because what he imputes to us he must declare for himself; but I wish to repudiate the proposition so far as I am concerned, and to say that I observe a distinction between slavery and polygamy under the Constitution.

Mr. ETHERIDGE. I know that the honorable gentleman does, for he has stated it. I am only speaking for myself.

Mr. PRYOR. Very well, then. Let that be understood.

Mr. ETHERIDGE. Of course I am not responsible for the opinions of others.

Mr. LAMAR. The gentleman has not answered my question. My question is, whether the gentleman asserts the power, the constitutional competeney of Congress to declare and punish slavery in the Territories as a felony or a crime?

Mr. ETHERIDGE. I say, sir, that I admit the power of Congress to legislate over the black population in these Territories with reference to the very same *offences* that Congress assumes to legislate about where the white people of a Territory are concerned. I say that while this bill upon its face does not embrace negroes who are slaves, yet that Congress has the power, according to the principles of this bill, either to increase the number of offenees or to extend the punishment contemplated to negroes who are slaves. Every man must know that this legislation is based upon the idea that this illicit association of the people of Utah is subversive of good morals, and offensive in the sight of God and man.

My friend from Kentucky (Mr. MALLORY) referred a while ago to the marriage of slaves. I have here the authority to sustain the statement I made——

Mr. LAMAR. Before the gentleman goes to that I will put a question to him.

Mr. ETHERIDGE. One thing at a time.

Mr. LAMAR. I am so much indebted to the gentleman for the clear answer he has given me, that I want to put another question to him.

Mr. ETHERIDGE. The gentleman will pardon me. I have, I understand, but a few minutes more of my time left.

I will read an extract from the law book I hold in my hand upon the point I referred to in reference to the marriage of slaves. Marriage is defined as follows:

"A contract made in due form of law, by which *a free man* and *a free woman* engage to live with each other during their joint lives, in the union which ought to exist between husband and wife. By the terms *free man* and *free woman*, in this definition, are meant, not only that they are *free*, and *not slaves*, but also that they are clear of all bars to a lawful marriage."

Mr. MALLORY. Which case is that?

Mr. ETHERIDGE. Here is a list of cases cited in the authority from

which I read, almost as long as Pennsylvania Avenue, and the gentleman can take his choice of them. (Laughter.) I read from Bouvier's Law Dictionary.

I am reminded, Mr. Speaker, that I have but five minutes of my hour left. I have submitted gracefully to interruptions. I know that it is an ungrateful task to unfold to any political party the dangers which are involved in a step it is thus forced to take. I shall not be surprised, if we postpone a vote on this bill for a day or two, to find my opinions sustained by many of the most cautious and intelligent leaders of the Democratic party.

I know many gentlemen are not willing to deny the legal conclusions fairly to be drawn from the principles conceded by this bill. I put it to gentlemen whether they are not bound to admit that by the passage of this bill they surrender, to a great extent, the controverted question of the power of Congress over the Territories; or, rather, the power to reach slavery by "unfriendly legislation?"

I vote for the bill upon the ground that the moral sense of my constituents of all parties demands it. I think posterity is interested in the extirpation of Mormonism in Utah. I am aware that there are various amendments pending, intended or designed to avoid the force of the view I have presented. My friend from North Carolina, (Mr. BRANCH,) whom I have referred to already, will admit, if called upon, that the object of his amendment is to obviate the difficulty I have named, and escape a direct vote upon the bill.

Mr. BRANCH. I will say in response to the gentleman from Tennessee, that I had no such object in view as the dodging of any portion of the bill. My object was effectually to root out polygamy in Utah; and, to remove any suspicion the gentleman may have that I desire, either for myself or my friends, to dodge this bill, I tell him now, sir, distinctly, that I will never vote for the first section of that bill; that polygamy may continue to exist in Utah before I will vote to eradicate it by means of the first section of the bill.

Mr. ETHERIDGE. The gentleman is willing to take the responsibility and vote against it. He is a kind man, and felt some sympathy for his friends; and, sir, the amendment offered by him was designed to give his friends a narrow gangway upon which to escape from the wreck of the dangers behind them. I am sure that the amendment was kindly meant on his part, and offered in order that his Democratic friends, or some of them, might have a chance to avoid an inconsistent position which would be obvious were they to vote for this bill with a knowledge, as they already have, of the effect of its provisions, and the concession it makes to the power of Congress over the Territories.

I am willing to take all the responsibility in voting for this bill. This is a great exigency which demands it. It is wrong to surrender that large Territory, to become in future time another Sodom and Gomorrah. I repeat, I will vote for this bill or any other which is sufficiently stringent to strike at the root of this acknowledged evil—this admitted crime.

SPEECH

OF

EMERSON ETHERIDGE,

OF TENNESSEE,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

APRIL 2, 1860.

The House having under consideration the bill for prohibiting and punishing polygamy in the Territories—Mr. ETHERIDGE said:

Mr. SPEAKER: I recollect a short time ago seeing an account of a colloquy between two friends, in regard to the certainty of the final coming of the millennium—when the lion and lamb were to lie down together. One was finally convinced by the other that the time would eventually come, but he consoled himself in making the admission, by saying that he had the satisfaction of believing that the lamb would be inside the lion. (Laughter.) We have the lion and the lamb now apparently lying down together in the House of Representatives, and it remains for the historian to ascertain hereafter which is the lamb. and which is the lion. (Renewed laughter.) For the first time since I have been a member of Congress do I see—though with some slight exhibitions of protest, it is true—my Democratic friends and the Republican party harmonizing in relation to this controverted and vexed question of the legislative power of Congress over the domestic institutions of the people of the Territories of the United States. "To that complexion has it come at last."

That my morality may not be questioned at any future time, I announce in the beginning that I shall vote for this bill, or any other measure having in view the same end—the abolition of polygamy in Utah. My readiness to do so is attributable, I am sure, in a great degree, to my early piety. (Laughter.) I believe sincerely, however, that whoever votes for this bill understandingly, and with the knowledge of the congressional power involved in passing it, that man will not be in a position hereafter to deny consistently that *Congress*, by "unfriendly legislation" upon this and kindred subjects, may cripple slavery in the Territories. My friend from North Carolina (Mr. BRANCH) felt the force of this when, a few days ago, he presented a substitute for the bill. He is a cautious and observant gentleman, and readily perceived, as I suppose, that the first section of the bill, which creates the offence of bigamy in the Territories, was an ad-

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mission that Congress has the right or power to legislate in regard to the "domestic institutions" of the people of the organized Territories. He offered his amendment or substitute at the earliest possible moment—a substitute which enables him to obviate the difficulty I have pointed out; while at the same time it makes a record which it will be very convenient for him to refer to hereafter when he gets into a congressional canvass; and by which he will, no doubt, he able satisfactorily to show his constituents that he had nothing to do with this transaction. (Laughter.)

Mr. READAN. Does the gentleman's support of the bill rest upon the ground that he believes in doing so he is asserting the doctrine of the power of Congress over the subject of slavery?

Mr. ETHERIDGE. The gentleman will know all my reasons for favoring the passage of the bill by waiting until I get through with my remarks. I intend to be as clear and explicit as I can. I desire so to act and speak in regard to this matter that neither my vote nor my reasons for it need be misunderstood. I think I understand the legal effect of the bill; and my remarks are designed as a kind warning to certain gentlemen who may not have examined closely its provisions, and who are not fully conscious of its lack of harmony with some modern political teachings. I am not asking any gentleman to vote for the bill. I have made up my mind to do so. This course accords with my judgment, and unlike other gentlemen, who may desire to act with reference to the effect their course may have on their constituents, I feel no such restraints. Having no political future, because I have no political aspirations, I am willing and anxious to meet this question, and ready to aid in strangling this iniquity while we may, without any reference whatever to the fortunes of political parties. As I said before, my advocacy of the bill, if gentlemen desire it, may he attributed to my early training—to the moral precepts which were taught me in my earlier years.

Mr. JOHN COCHRANE. My friend from Tennessee says he has no political future; but in reference to his own piety he takes this position. In respect to that piety, I ask him if he has a future?

Mr. ETHERIDGE. I have; and will remind my friend from New York, and *warn* him, too, of the old poetic saying, that

"Those who have grown gray in sin
Are hardened in their crimes."—(Laughter.)

Now, sir, what I shall hereafter say is not to be construed into an attack upon the bill. I repeat, I am for it, sincerely so; and if this proposition fails, I shall go for the next best proposition which, to any extent, will break up this den of polygamists who now pollute the atmosphere of Utah.

When the bill was first reported, and until within the last few days, I supposed that it would meet but little opposition. In fact, my sympathy was somewhat excited at the inequality in numbers of the advocates and opposers of this restrictive measure; this interference with the conjugal happiness of so many of our fellow-citizens in this distant country. It is the first great battle between the pious monogamists and the patriarchal polygamists. Our conjugal friend from Utah (Mr. HOOPER) is, I apprehend, almost the sole public champion of the happy state of many of his most prosperous constituents; and

really the numerical odds which appear against him excite my sympathy; for I feel always a generous sympathy for the few in their struggle with the many.

But there is not only an important principle in this bill, as well as a great duty to perform. That principle I have already briefly referred to; and it might as well be stated now as hereafter, that the Republicans will not only claim the chief merit of the passage of the bill, but they will point to it in after-times as a direct legislative admission of the power of Congress over the domestic affairs of the people of the organized Territories, including negro slavery. Even now we can observe them exhibiting every mark of satisfaction as they behold our extreme Democratic friends moving into this political snare, which is contrary to the former expositions of your platforms; and the kindness of my nature alone prompts me to warn gentlemen of the danger. I do not desire to have any one misled by carelessness or inadvertence. This question of the power of Congress to regulate the domestic institutions and relations of the *white* people of Utah is one which necessarily and unavoidably brings up the whole question of the power of Congress to govern those Territories in everything which relates to their domestic affairs—slavery included. Gentlemen feel it, and it is useless to attempt to avoid the force of what I have said by a denial only.

Now, I regret that this question of the power of Congress to govern the Territories promises to be, in the future as in the past, a controverted one—a question which is to be always open and controverted, and upon which it seems next to impossible to obtain anything like unanimity on the part of our public men. Every three or four years, I am, out of obedience to what seems to be the altered public sentiment of the South, required by the Democratic party to change some former opinion—to subscribe to some new dogma or party platform. I hardly get my political catechism memorized before I am required to renounce its teachings and take lessons in another.

I was reading, a day or two ago, from the opinion of Judge Taney in the Dred Scott case, a remark of his, which struck me with some force, and though it was made in regard to another question—to wit, whether or not a negro should be regarded as a "citizen"—yet, if these words, "negro" and "citizen," had been stricken out, and "power of Congress over the Territories" inserted, the Republican members would have seized upon it as an argument to support their construction of the Constitution. I will read it:

"We have the language of the Declaration of Independence, and of the Articles of the Confederation, in addition to the plain words of the Constitution itself; we have the legislation of the different States, before, about the time, and since, the Constitution was adopted; we have the legislation of Congress, from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together, and leading to the same result."

What "result?" That the negro was not a *citizen* of the United States within the meaning of the Constitution.

Here we find the highest judicial tribunal of this country pointing to the action of Congress for sixty years, to the opinions of Attorneys General; to the action of State Legislatures; to public opinion itself, to show what was the proper construction of the Constitution in regard to the matter which was then being considered. Previous to

1848–'49, the action of Congress, the executive department, the opinions of those who formed the Constitution, and the general acquiescence of the people, all might have been referred to as an argument in favor of the correctness of the action of the Government for the first sixty years of its existence, in governing the Territories, and exercising an unquestioned jurisdiction to regulate the domestic institutions of the people thereof. I say this was the generally received opinion of our public men up to 1848'–49. Then the whole question was reviewed, and it resulted, in 1850, in a compromise of opinion, by which the whole subject of the government of the Territories was referred to the people—as in the case of New Mexico and Utah—reserving only to Congress the right to dissent from any legislative acts of the Legislatures of these Territories which Congress might not approve. Well, that doctrine was incorporated into the platforms of the Whig and Democratic parties of 1852, and both these parties, in the presidential contest of that year, declared it should be thereafter adhered to; and all parties were required to say that the congressional legislation of 1850, in regard to the whole slavery question in the Territories, should be forever maintained.

Well, in 1854, the catechism was again revised by the passage of the Kansas-Nebraska bill, the principal feature of which was, that the legislation which Congress had applied to the Territories of Utah and New Mexico was proper as far as it went, but that it did not go far enough; that you must give to the people of Kansas and Nebraska the power to regulate *all* their "*domestic institutions*" in their own way, subject to no restraint whatever, except the restraint imposed upon them by the Constitution, which restraint, as every one knew, existed before you imposed it by the terms of the bill. But you went further, and said that you cared not what they might do in regard to their "domestic institutions," you would not interfere with them. Everybody was required to give in to this new article in the Democratic catechism; to declare it the settled policy of the whole country, and particularly of the South. Thus stood the matter until 1860, when the catechism or Democratic confession of faith is again to be revised. All the teachings of the faithful in 1856 are now to be regarded as so much *bosh*; and I am now required by the Democratic leaders of the section of country in which I live to say that Congress has plenary power over the Territories, provided always that that power shall be exercised alone upon one side—(laughter)—upon the southern side. It—the power of Congress—according to modern Democratic teaching, can be exercised only in favor of the negro, or, rather, in favor of slavery in the Territories; and never against slavery. That is now the reading of the catechism. It may not be *published* until after the Charleston convention; but it will soon have an indorsement a thousand times more powerful than was given to the Impending Crisis of Helper.

I revert to these things to show you how public opinion has been unsettled by the action of political conventions, and by the action of politicians. And to-day, no man can tell, with any degree of certainty, what the people will be required to believe in reference to the power of Congress over the Territories four years hence. I confess I am afloat; I am drifting along at the mercy of the winds and waves,

hoping and trusting that I shall ultimately find some peaceful place to pillow my head—if nowhere else, at home, among those who would gladly see fraternal relations restored among the brethren of a common country—a country they love, because of its blessings. I repeat, it is impossible that the people can keep up with these new teachings and changes of those who seek to control and direct public opinion.

Now, sir, what are *domestic institutions?* They consist simply of husband and wife, parent and child, guardian and ward, master and servant, and master and slave. I believe this enumeration embraces the entire list, as recognized in the law books. Now, when you have said to the people of those Territories that they may form and regulate their own domestic institutions in their own way, subject only to the Constitution of the United States—which restriction Mr. Benton declared was a stump speech injected into the body of the bill—you stipulated with them that they should exercise this power *in all cases.* I have enumerated all the domestic relations known to the laws of this country; and I appeal to you whether I have not enumerated them correctly. And I ask, if Congress can take jurisdiction of the relation of husband and wife, may it not also exercise jurisdiction in regard to another domestic relation? Now, "forewarned is forearmed." I know that many gentlemen will believe that I am inviting attention to these things to produce "difficulties in the family." But I disclaim any such purpose. There is domestic trouble enough in Utah, without increasing it here. I have but announced my deliberate legal opinion, which I trust I shall always have the moral courage to avow whenever the occasion and my public duty call for it. Domestic institutions have been about the same from the beginning of time. Go back to the days of Abraham. Ask my patriarchal friend from Utah, the sole representative of the "domestic institutions" of the rising young State of Utah—"domestic," I might say, in an eminent degree, (laughter)—and he will tell you that his constituents are attempting to perpetuate the manners and customs of antiquity, and it is uncandid in us to say that this bill does not interfere with one of the "domestic institutions" of society. The Delegate from Utah, who is the sole representative of the people of that Territory, I am sure will feel that the American Congress is disposed to proscribe a portion of his fellow-citizens, by interfering with their most cherished institution; and his sensibilities must be touched at the prospect of passing a measure, the effect of which will be to drive many a wife and matron from homes which are endeared by an exuberance of conjugal love, and thus cause them to sorrow alone in the face of an unsympathizing world. (Laughter.) Do you suppose the people of Utah would have taken this liberty of remodeling their domestic institutions, and falling back upon the customs of the patriarchal age, if you had not given them the power to "form and regulate their domestic institutions," and taught them that, in all domestic affairs, "*the people of a territory, like those of a State,*" were sovereign and independent? And should not some of our friends be lenient to these deluded Mormons, who are so ready, for their own justification, to appropriate to themselves the force of the example of the patriarchal age? And do not these friends of ours—unnecessarily, I admit—also point to Abraham, with his flocks and herds, his horses and his cattle, his man

servants and his maid servants, as a conclusive authority and vindication for our own peculiar institution, when assailed by fanaticism? And ought we not to be somewhat kind and forbearing, when we hear our patriarchal friend from Utah exclaim: "We have Abraham to our father." (Laughter.) I feel the force of these things; but I shall not hesitate, because of these considerations, to grapple with this monster, polygamy, while it is in its infancy, and may be subdued.

Now, sir, I maintain that all writers on jurisprudence, who allude to the domestic relations, declare husband and wife to be among the most sacred. That of master and servant, or master and slave, are certainly not regarded as any more sacred than that of husband and wife, and parent and child. If, sir, there is anything in the world for which sooner than another a man will peril his life, everything, it is for his wife, the mother of his children; and it must not be forgotten that these deluded people regard polygamy not only as a part of their social relations, but as a feature in their religion.

Now I am favoring this measure, I admit, with a perfect consciousness of all the legal consequences fairly involved in the passage of the bill. I represent one of the most intelligent, religious, and moral districts in the whole country; and my constituents, without respect to party, have desired me to use my feeble influence to put down this monstrosity; this offence against religion, and against the laws of God. There is an important legal principle conceded in this bill, to wit: that we have the power to break up this abomination in Utah; but I propose, by leave of the House, to extend the application a little, because it is a very dangerous premise, which, when conceded, proves too much. I maintain that this bill concedes too much for that class of southern politicians who maintain that the Constitution carries slavery into all the organized Territories, whether the people of such Territories favor it or oppose it, and that it is the duty of Congress to legislate for it, and to maintain it—slavery—there, without any regard whatever to the popular will. As this bill concedes the right or power of Congress to legislate against a domestic institution, I propose, I say, to extend the application, and see whether the poisoned chalice may not be commended to their own lips. Now, perhaps, I should not, were I to consult the wishes of gentlemen, speak with this sort of freedom—certainly not if I were restrained by selfish considerations—but having no interest in my country but that of a citizen who desires its peace and prosperity, and no motive of a political nature, no aspirations to make me uncandid or to warp my judgment, I shall indulge in a fair and candid expression of honest opinion, unawed by anybody. I propose to notice some offences not mentioned in this bill, but which are of a kindred nature; and though they are not so much talked of, yet they might be easily embraced in this bill. I almost dislike to name them; but it is said, "the galleries should have no ears."

An acquaintance of mine, a candidate for Congress last year, was called upon by a distinguished constituent, who said he intended to vote for him for Congress; but before doing so, he wanted an explanation from him. "I see," said he, "that there is a terrible thing in the western country; a woman who is giving the Government a deal of trouble out in Utah. I believe," said he, "they call her Polly Gammy; who is she?" "Why," said my friend, "she is the favorite wife

of Brigham young." (Laughter.) Now, if I had some other name than the correct one for some offences, proper to be mentioned in this connection, I certainly should appropriate it.

I repeat, there are other offences of a kindred character to polygamy. Take, for instance, the crimes of incest, adultery, and other offences that are well known to lawyers, and which I need not enumerate very particularly; not one of which offences can be called *malum in se*; they are all *mala prohibita*. Now, why does this bill limit the punishment to the offence of polygamy, and omit incest and adultery—punish married persons and not the unmarried? The answer, of course, is, that polygamy is the worst offence. I admit it; but *we have the power* to add incest and adultery to the offence of polygamy—to punish the single as well as the married. I give this illustration to show that the principle conceded by the first section of the bill may be extended so as to embrace all offences of a kindred nature. They are not *mala in se;* they are *mala prohibita;* created and defined by statute, and punished or connived at according to the fashion of the times.

Blackstone says, in speaking of *lewdness*, that it was cognizable in his day by the temporal courts; that in 1650, when the ruling powers found it for their interests to put on the semblance of great purity of morals, incest and adultery were made capital crimes. But at the Restoration, men fell into a contrary extreme of licentiousness, when the rigor of the law was not renewed. These offences that are not *mala in se* are unknown in some countries, and have in others been introduced by statutory regulation. Do not gentlemen, therefore, see that the application of the principle of this bill might be extended so as to embrace all the offences I have mentioned. No gentleman will say that the application of this principle may not be extended so as to embrace them all. And if you can extend the principle so as to embrace them, may you not extend it so as to embrace all persons, of every color, to whom Congress may desire to apply it? If Congress has power to regulate the domestic relations of *white* people in the Territories, may not a Republican Congress hereafter consistently propose to extend it to the relations between black men and women also?

It cannot be said that the *legal* relation of husband and wife exists among the slave population. Every lawyer will admit that marriage can be legally contracted only by *free* persons, and there is not a slave State in the Union—if there is I would thank gentlemen to correct me—that allows marriage among slaves, and regards it as that legal civil contract which is essential and indispensable to a legal marriage.

Mr. MALLORY. In reply to the gentleman from Tennessee, I will state that there is a common law prevailing throughout the slave States of the Union which regards the marriage contract between slaves as sacred. There is no statute provision; but in my State it is regarded in that light, and I believe in every other slave State in this Union.

Mr. ETHERIDGE. Mr. Speaker, I have examined this question to-day, and all the law writers say that marriage can only be contracted by free persons.

There is not an exception. It is certainly true, as I remarked, that there is not a slave State in the Union that regards the relation of hus-

band and wife among slaves, save only so far as the master may be pleased to regard it; and it affords me pleasure to say that in a large majority of instances they respect this relation; but that is not attributable to the provisions of the laws, hut to the humanity of the masters.

Mr. MALLORY. The *lex non scripta.*

Mr. ETHERIDGE. The *lex non scripta* does not apply to the slave population, whom we regard as having no legal rights, except those specially conferred upon them hy law, of which the right to contract marriage is not one. But to show that negroes can be made subject to the legislation of Congress, by extending the application of the provisions of this hill, I have hut to point to the fact that in every slave State in the Union negroes are regarded as capable of committing all offences that may he committed hy white men. There is scarcely a misdemeanor or crime known to the laws of any southern State that may not he committed hy a negro, and is not punishahle in all cases with more or less severity. Petty larceny, for instance, is punished with less severity.

Mr. MOORE, of Kentucky. Will the gentleman from Tennessee allow me to ask him one question?

Mr. ETHERIDGE. Yes.

Mr. MOORE, of Kentucky. Does the statute of your State prohibit fornication among negroes?

Mr. ETHERIDGE. I remember no regulation on the subject; hut the legislative power of the State can at any time declare it a misdemeanor or a felony. I ask the gentleman this question: If Congress has power to interdict offences among white people in the Territories, may it not among black people or slaves?

Mr. MOORE, of Kentucky. How can you prohibit a second marriage among slaves, when, according to the gentleman's own argument, they cannot marry the first time?

Mr. ETHERIDGE. The gentleman will admit that I have shown that if Congress has power to prohibit polygamy, it may likewise prohibit adultery and all kindred offences; and I ask the gentleman if Congress cannot extend the application of its laws to blacks as well as to whites?

Mr. MOORE, of Kentucky. I say not, if the question is addressed to me.

Mr. ETHERIDGE. The gentleman says not; but I have too much respect for his legal ahility to believe that when he comes to look into the question he will arrive at any such conclusion.

Now, if you fall back upon the late edition of the Democratic catechism, to wit: that every citizen who goes into the Territories carries with him the laws of his domicile—in other words, that every southern man who carries a slave into the Territories carries also with him the slave laws of the State whence he emigrates—the gentlemen will be compelled to admit that if polygamy had existed anterior to the formation of the Federal Constitution in the old thirteen States, it could now lawfully exist in the Territories. I presume no one will deny it. Certainly no gentleman will deny it who has said that whenever a slaveholder goes into a Territory with slave property, he carries with him the slave laws of the State from which he goes. Now, if he car-

ries with him the laws of his State with regard to slavery, does he not also carry with him the laws of his State with regard to the relations of husband and wife, and parent and child? Gentlemen must admit that. I concede that it is historically true that polygamy did not exist in the original thirteen States that formed the Federal Constitution; but no one will deny that any State has the power at any time to change its organic laws, and permit polygamy. Well, suppose, for the sake of the argument, that all the States in this Union were now to allow polygamy: then gentlemen will have to concede that polygamists would be allowed to go into the Territories of the United States and be protected by Congress in the enjoyment of this peculiar institution—of their property.

Then, it comes to this: that the interpretation of the Constitution is made to depend, not upon the reading of the Constitution itself, but upon the whimsical action of the several States. You say that you *now* have authority under the Constitution to interdict polygamy in the Territories; but suppose the States were to legalize it; then our political high priests would doubtless permit these Mormons to go into the Territories with their families, however numerous, and to establish their harems there in defiance of the power of Congress. This is certainly a new mode by which to interpret the Constitution. I am prepared with very high Democratic authority to show that such a position is indefensible. It is absurd. I will read again from the opinion of the Chief Justice in the celebrated case of Dred Scott.

Mr. LAMAR. Will the gentleman allow me to put a question to him?

Mr. ETHERIDGE. As soon as I get through with the extract I wish to read. Judge Taney says, in regard to all attempts to construe the Constitution with reference to changes in public sentiment, since its formation:

"No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe, or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor *than they were intended to bear when the instrument was framed and adopted.* Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, *it must be construed now as it was understood at the time of its adoption.* It is not only *the same in words,* but *the same in meaning,* and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, *but with the same meaning and intent with which it spoke when it came from the hands of its framers,* and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, *and make it the mere reflex of the popular opinion or passion of the day.* This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty."

I ask then, gentlemen, how can the different States of this Union, by introducing polygamy, legalize it in the Territories? And that is precisely the position that all must assume who maintain that when a person goes from one of the States of the Union into the Territories, he carries with him the local laws of the State from which he emigrates in regard to the property he carries with him. We are told here, day by day, that the Constitution of the United States *recognizes slavery.* It has been repeated over and over again, until the super-